

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Welker	Team: Team # 8	CCRB Case #: 200802673	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 02/16/2008 11:37 PM	Location of Incident: 779 Logan Street and the 75th Precinct stationhouse	Precinct: 75	18 Mo. SOL 8/16/2009	EO SOL 8/16/2009	
Date/Time CV Reported Sun, 02/17/2008 4:31 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/21/2008 4:31 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Napolitano	29370	940682	075 PCT
2. POM Thomas Rouse	30175	931106	075 PCT
3. Officers			075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Edward Mulhearn	31166	930792	075 DET
2. POM Vito Nicoletta	01372	935400	075 PCT
3. POM Matthew Menze	05241	916211	075 PCT
4. POM Paul Viar	20378	923317	075 PCT
5. SGT Sean Downes	03978	918975	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers stopped § 87(2)(b)	
B. Officers	Abuse: Officers stopped § 87(2)(b)	
C. Officers	Force: Officers pointed their guns at § 87(2)(b)	
D. POM Thomas Rouse	Abuse: PO Thomas Rouse threatened § 87(2)(b) with the use of force.	
E. POM Thomas Napolitano	Force: PO Thomas Napolitano struck § 87(2)(b) with a gun.	
F. POM Thomas Napolitano	Force: Thomas Napolitano used pepper spray against § 87(2)(b)	
G. Officers	Force: Officers used physical force against § 87(2)(b)	
H. Officers	Force: At the 75th Precinct stationhouse, officers used physical force against § 87(2)(b)	

Synopsis

On February 16, 2008, at approximately 11:30 PM, § 87(2)(b) and his brother, § 87(2)(b) were stopped by PO Thomas Napolitano, PO Matthew Menze, PO Vito Nicoletta, PO Thomas Rouse, and PO Edward Mulhearn of the 75th Precinct at 779 Logan Street in Brooklyn (**Allegation A and Allegation B**). Officers pointed their guns at § 87(2)(b) and § 87(2)(b) (**Allegation C**). Officers told § 87(2)(b) to put his hands up, which he did. PO Rouse told § 87(2)(b) that he would murder him (**Allegation D**). PO Napolitano hit § 87(2)(b) five times on the right side of his face with a gun (**Allegation E**). PO Napolitano pepper sprayed § 87(2)(b) after he was handcuffed (**Allegation F**). Officers then kicked and punched § 87(2)(b) while he was handcuffed on the ground (**Allegation G**). At the 75th Precinct stationhouse, officers pulled § 87(2)(b)'s hair and punched him while he was being treated by EMS (**Allegation H**).

§ 87(2)(g) [REDACTED]

On December 2, 2008, this case was reassigned to Investigator Welker, following Investigator Watson's resignation from the agency.

Summary of Complaint

§ 87(2)(b) is a § 87(2)(b)-old black male with brown hair and brown eyes. He is 5'10" tall and weighs 170 pounds.

On February 16, 2008, Sergeant Downes filed a report with IAB regarding this incident (encl. 5a-5d). On February 17, 2008, and February 18, 2008, § 87(2)(b) provided a statement to IAB (encl. 5c). IAB is concurrently investigating this case, which is still open. Although IAB log 08-06423 was requested twice, the CCRB has still not received the case file (encl. 25b-25g). On April 2, 2008, § 87(2)(b) made a phone statement to the CCRB (encl. 6c-6d). On April 25, 2008, the CCRB interviewed § 87(2)(b) at § 87(2)(b) on Riker's Island (encl. 7a-7d).

On February 16, 2008, at approximately 11:30 PM, § 87(2)(b) walked from his girlfriend's apartment at § 87(2)(b) to Logan Street in Brooklyn with his brother, § 87(2)(b). § 87(2)(b) stopped at a house with an unknown street number on Logan Street to speak with some of his relatives. Afterwards, § 87(2)(b) and § 87(2)(b) continued walking on Logan Street towards Linden Street when they were stopped by approximately five police officers, identified by the investigation as PO Thomas Napolitano, PO Matthew Menze, PO Vito Nicoletta, PO Thomas Rouse, and PO Edward Mulhearn of the 75th Precinct (**Allegation A and Allegation B**). In his statement to IAB, § 87(2)(b) said that he was stopped by officers when he walked past a red car. The officers had their guns pointed (**Allegation C**). Some of the officers told § 87(2)(b) to put his hands up, some of the officers told § 87(2)(b) to put his hands down. An unidentified officer searched § 87(2)(b) and asked him to leave the scene, which he did. § 87(2)(b) did not make allegations regarding § 87(2)(b) in his statements to IAB. An officer, identified by the investigation as PO Rouse, told § 87(2)(b) that he would murder him (**Allegation D**). PO

Rouse was pointing his gun at § 87(2)(b) § 87(2)(b) put his hands up and said, "I'm not doing anything." The officers screamed at him, asking where the murder weapon was. § 87(2)(b) responded, "What the fuck are you talking about?" Then, PO Napolitano hit him five times on the right side of his face with a gun, hitting his forehead and lip (Allegation E). Officers were holding him against the car when they handcuffed him.

Once § 87(2)(b) was cuffed, he was thrown to the ground and pepper sprayed (Allegation F). § 87(2)(b) did not see which officers sprayed him or threw him to the ground. After he was pepper sprayed, § 87(2)(b) was punched and kicked in his torso and legs (Allegation G). He couldn't see which officers were involved because of the pepper spray. He estimated that he was punched and kicked more than ten times. § 87(2)(b) told the CCRB that he did not physically resist at any point during the incident.

§ 87(2)(b) was taken to the 75th Precinct stationhouse. While he was in the holding cells, he was treated by EMS. Officers, identified by the investigation as PO Rouse and PO Nicoletta, held § 87(2)(b) in the chair because he refused to sit. Those officers pulled § 87(2)(b)'s hair and punched him in the neck and his side (Allegation H). § 87(2)(b) was taken to § 87(2)(b) where his eyes were cleaned. He also received five stitches for the lacerations on his lip and four stitches on his forehead. These injuries are visible in § 87(2)(b)'s arrest photograph (encl. 19d).

During his interview, § 87(2)(b) said that he and his brother have an ongoing problem with the 75th Precinct. § 87(2)(b) admitted to having a violent history and assaulting police officers in the past. § 87(2)(b) told the CCRB that he resisted arrest in the past, but in this case, he did not resist being handcuffed and he did not try to run away. § 87(2)(b) said that maybe he was a suspect regarding an individual being shot in the face.

Results of Investigation

Civilian Statements

§ 87(2)(b) CCRB Statement

On August 20, 2008, the CCRB interviewed § 87(2)(b) at Riker's Island (encl. 8a-8c). § 87(2)(b) is a § 87(2)(b)-old Hispanic male with black hair and brown eyes. He is 5'8" and weighs 150 pounds.

On February 16, 2008, at approximately 11:37 PM, § 87(2)(b) and his brother, § 87(2)(b) left their home at § 87(2)(b) in Brooklyn to get some money from a neighbor known only as § 87(2)(b) in order to go food shopping. § 87(2)(b) entered § 87(2)(b)'s home at the corner of § 87(2)(b). When § 87(2)(b) exited that location, § 87(2)(b) and § 87(2)(b) continued walking towards a corner bodega. An officer in plainclothes got out of an unmarked black vehicle and pointed his gun at § 87(2)(b) and § 87(2)(b). § 87(2)(b) described this officer as a male of medium complexion with light brown hair and a beard, who appeared to be in his 30s or 40s. This officer said, "Stop right there." § 87(2)(b) and § 87(2)(b) complied. An officer in plainclothes frisked and searched § 87(2)(b) pockets. § 87(2)(b) described this officer as a stocky white male with a red complexion and dark brown hair. A white male officer in plainclothes frisked and searched § 87(2)(b).

§ 87(2)(b) sat on the bumper of one of the cars and the officers asked him if he knew § 87(2)(b). He said he did. § 87(2)(b) was handcuffed and also sitting on the bumper of a different car. At some point, § 87(2)(b) did not know when, two marked cars arrived and uniformed officers came to the scene. § 87(2)(b) was at the scene for 30 to 60 minutes before an officer told him to leave. He left but came back. The officer that pointed a gun told § 87(2)(b) that he would be arrested if he didn't leave. § 87(2)(b) saw seven to ten police officers at the scene. § 87(2)(b) did not recall if officers used physical force against § 87(2)(b). § 87(2)(b) did not appear to be injured.

EMT § 87(2)(b) CCRB Statement

On May 20, 2008, the CCRB interviewed EMT § 87(2)(b) (encl. 10a-10c).

On February 16, 2008, EMT § 87(2)(b) and her partner, EMT § 87(2)(b) received a call for an injury. They responded to the 75th Precinct stationhouse where they treated § 87(2)(b). He had bruises on his face and he had been pepper sprayed. EMT § 87(2)(b) recalled that he was bleeding and might have had lacerations on his face. § 87(2)(b) was sitting in a chair, handcuffed while EMT § 87(2)(b) and EMT § 87(2)(b) cleaned out his eyes. Some officers were trying to take a picture of § 87(2)(b)'s injuries, but he was physically resistant. He was yelling and cursing at the officers, and then he began to spit at the officers. The officers restrained § 87(2)(b). Officers did not pull his hair or punch him. § 87(2)(b) was later transported to § 87(2)(b).

EMT § 87(2)(b) CCRB Statement

On September 15, 2008, the CCRB interviewed EMT § 87(2)(b) (encl. 9a-9c).

On February 16, 2008, EMT § 87(2)(b) and his partner, EMT § 87(2)(b) responded to the 75th Precinct stationhouse for an injury. When they arrived, § 87(2)(b) was restrained. He had a laceration on his forehead. Officers held down § 87(2)(b) who was spitting, while EMT § 87(2)(b) irrigated his eyes, which had been pepper sprayed. EMT § 87(2)(b) did not see any officers punch § 87(2)(b). He did not recall if officers pulled § 87(2)(b)'s hair. EMT § 87(2)(b) and his partner transported § 87(2)(b) to § 87(2)(b).

Officer Statements

PO Thomas Napolitano, Memo Book Entry

PO Napolitano has the following memo book entries regarding this incident (encl. 11a).

“2335: Car stop at 779 Logan. 2337: 1 under at location. 2340: 62A at PCT regarding 1 under § 87(2)(b) § 87(2)(b) Arrest § 87(2)(b) § 87(2)(b).”

PO Thomas Napolitano, CCRB Statement

On December 12, 2008, the CCRB interviewed PO Thomas Napolitano of the 75th Precinct (encl. 11b-11d). *PO Napolitano is a § 87(2)(b)-old white male with black hair and brown eyes. He is 6'3" tall and weighs 230 pounds.*

On February 16, 2008, PO Napolitano was assigned to work sector patrol with PO Menze from 3:00 PM to 11:35 PM. He was dressed in uniform and assigned to marked patrol car 1915.

On February 16, 2008, during routine patrol, PO Napolitano and PO Menze drove past a red Honda Civic that was parked near a fire hydrant on 779 Logan Street in Brooklyn. PO Napolitano recognized the vehicle as a vehicle that he had attempted to pull over in December of 2007. The vehicle did not stop for him and the pursuit was called off because the circumstances were too dangerous. At the time, he ran the plates, which came back as reported stolen. On February 16, 2008, PO Napolitano ran the license plates of the red Honda Civic, which was still reported stolen. PO Napolitano called Sgt. Downes, and the 75th Precinct Anti Crime team set up a surveillance of the vehicle. PO Viar was the observation post. PO Napolitano and PO Menze parked a block from the vehicle and waited. They received a call over the radio from the Anti Crime team that an individual got into the vehicle. PO Napolitano and PO Menze drove to the incident location and converged with the Anti Crime team.

PO Napolitano parked directly in front of the Honda Civic with his turret lights on. As soon as police vehicles approached the vehicle, § 87(2)(b) exited the vehicle and ran towards the rear of the vehicle. PO Napolitano, PO Menze, PO Rouse, PO Nicoletta, and PO Mulhearn all approached § 87(2)(b). Officers said, “Put your hands behind your back...let me see your hands.” None of the officers had their guns drawn at any point during the incident. PO Napolitano and PO Menze were the first officers to have

physical contact with § 87(2)(b). When they tried to grab his arms, § 87(2)(b) was immediately resistant. He tried to pull away and he was swinging and kicking at officers. PO Mulhearn, PO Nicoletta, and PO Rouse assisted PO Napolitano and PO Menze to restrain § 87(2)(b) and place him in handcuffs. § 87(2)(b) kicked PO Napolitano in the shins. PO Napolitano did not threaten to kill or murder § 87(2)(b) nor did any of the officers at the scene.

PO Napolitano pepper sprayed § 87(2)(b) as the officers were trying to get him to the ground. § 87(2)(b) fell face forward on the ground. Officers that were participating in the struggle fell as well. § 87(2)(b) continued to struggle while he was face down on the ground. He refused to give his arms to officers, he kicked, and he continually turned his head to spit at officers. § 87(2)(b)'s face was on the ground, but PO Napolitano did not recall which side of his face. PO Napolitano did not hit § 87(2)(b) with his gun, nor did he see any officers hit § 87(2)(b) with their guns. PO Napolitano did not punch or kick § 87(2)(b). He did not see any officer kick or punch § 87(2)(b). There was a crowd of approximately 20 to 30 people at the scene. During the struggle, § 87(2)(b) screamed towards the crowd, "Go get my gun." § 87(2)(b) had visible injuries on his face as a result of the struggle. He continued to resist when officers placed him in a patrol car. He thrashed about and continued to spit all over the back seat of the patrol car.

PO Napolitano did not stop, frisk, or search any additional individuals during this incident. He did not see officers stop, frisk, or search any additional individuals at the scene. PO Napolitano was not present in the holding cell area at the 75th Precinct stationhouse when § 87(2)(b) received medical treatment.

PO Matthew Menze, Memo Book Entry

PO Menze has the following memo book entries regarding this incident (encl. 12a-12c).

"2325: car stop at 779 Logan Avenue. 2345: one under by partner for § 87(2)(b). 2345: § 87(2)(b) with arrest/vouchering."

PO Matthew Menze, CCRB Statement

On December 12, 2008, the CCRB interviewed Matthew Menze of the 75th Precinct (encl. 12d-12e). *PO Menze is a § 87(2)(b)-old white male with black hair and blue eyes. He is 5'10" tall and weighs 240 pounds.*

On February 16, 2008, PO Menze was scheduled to work from 3:00 PM to 11:35 PM with PO Napolitano on sector patrol. He was dressed in uniform and assigned to marked RMP 1915.

On February 16, 2008, at approximately 10:00 PM, PO Napolitano and PO Menze drove by a red Honda Civic parked on Logan Street in Brooklyn. They recognized the car as a vehicle that they attempted to pull over in December 2007. That vehicle drove away from the police officers in a reckless manner. At the time, PO Menze and PO Napolitano did not pursue the vehicle due to the reckless nature that the vehicle was driving. They ran the plates of the vehicle and it came back as reported stolen. On February 16, 2008, the red Honda Civic parked in front of 779 Logan Street stood out to them. In addition to being the same color and model that they attempted to pull over previously, it is routine to check the license plates of Honda Civics because they are typical stolen vehicles. They ran the plates of the vehicle and it came back as stolen. PO Napolitano and PO Menze then called the 75th Precinct Anti Crime unit to set up surveillance of the vehicle.

PO Menze and PO Napolitano parked approximately one block away from the vehicle. PO Menze and PO Napolitano waited approximately one and a half hours until they received a call that a male was entering the vehicle. They drove to the incident location with their sirens on and parked directly in front of the vehicle. § 87(2)(b) was in the driver's seat, but quickly exited the vehicle and started walking towards the rear of the vehicle. PO Menze and PO Napolitano approached § 87(2)(b). They did not have their guns drawn. PO Menze said, "Come here." § 87(2)(b) did not indicate that he was going to

stop. Officers from the Anti Crime team arrived at the location. PO Menze did not threaten to kill or murder § 87(2)(b) nor did any other officers at the scene.

PO Menze and PO Napolitano grabbed § 87(2)(b)'s arms to place him in handcuffs. § 87(2)(b) was immediately combative and resistant. PO Mulhearn, PO Nicoletta, and PO Rouse assisted PO Menze and PO Napolitano to handcuff § 87(2)(b). § 87(2)(b) began flailing his arms, kicking, and spitting at officers. PO Menze did not kick or punch § 87(2)(b) nor did any officers at the scene. PO Menze did not hit § 87(2)(b) with his gun or any other object, nor did any officers at the scene. Officers repeatedly yelled, "Give me your hands." § 87(2)(b) continued to resist. PO Napolitano pepper sprayed § 87(2)(b) during the struggle. Then § 87(2)(b) PO Menze, PO Napolitano, and an unknown number of additional officers fell to the ground. § 87(2)(b) fell face forwards on the ground. It took two to three minutes once they were on the ground to handcuff § 87(2)(b). He continued to move his body on the ground and spit. After § 87(2)(b) was handcuffed, officers lifted him up to walk him to a patrol car. A crowd of approximately 25 to 30 people was present. § 87(2)(b) screamed towards the crowd approximately five times, "Go get my gun." § 87(2)(b) had blood on his face. § 87(2)(b) refused to get into the patrol car by kicking the door. Once he was inside of the patrol car, he thrashed around and spit on the plexi glass divider.

EMS arrived at the 75th Precinct to treat § 87(2)(b) and escort him to the hospital. They put a mask on him because he continued to spit. PO Menze did not have physical contact with § 87(2)(b) in the Precinct. PO Menze did not see an officer punch § 87(2)(b) or pull his hair.

PO Edward Mulhearn, Memo Book Entry

PO Mulhearn has the following memo book entries regarding this incident (encl.15a-15b).

"2330: 10-85 Sector J with PO Menze. Perp resisted. Begins being handcuffed and was sprayed by PO Napolitano after being OC, sprayed, perp scraped head against ground causing laceration to his face. Perp immediately removed to § 87(2)(b) for medical treatment. IAB notified by Sgt. Dowes. 200: End of Tour."

PO Edward Mulhearn, CCRB Statement

On December 23rd, 2008, the CCRB interviewed PO Edward Mulhearn of the 75th Precinct (encl.15c-15d). *PO Mulhearn is a § 87(2)(b)-old white male with brown hair and blue eyes. He is 6'1" tall and weighs 200 pounds.*

On February 16th, 2008 PO Mulhearn was assigned to Anti Crime with PO Rouse and PO Nicoletta from 5:30 PM to 2:00 AM. He was dressed in plainclothes and assigned to RMP 973.

On February 16th, 2008, at approximately 11:37 PM, the Anti-Crime team was assisting PO Menze and PO Napolitano, who were assigned to Sector J. PO Menze and PO Napolitano had information regarding a stolen car. The Anti Crime team assisted in conducting a surveillance of the vehicle.

The team was instructed to apprehend anyone that went to use the vehicle. PO Mulhearn, PO Rouse and PO Nicoletta were waiting, parked in their vehicle, two blocks away. PO Viar was hiding on foot in a yard near the vehicle. PO Menze and PO Nicoletta were parked one block away. PO Mulhearn, PO Rouse and PO Nicoletta received a notification from PO Viar to move in. PO Mulhearn, PO Rouse, and PO Nicoletta drove to the incident location. PO Menze and PO Napolitano pulled up to the vehicle with lights and sirens to prevent § 87(2)(b) from leaving. § 87(2)(b) got out of the car and PO Mulhearn, PO Rouse, PO Nicoletta approached him.

PO Viar and Sgt. Downes arrived at the scene at the same time as the other officers. § 87(2)(b) was outside the vehicle and was backing away as PO Menze and PO Napolitano were starting to approach § 87(2)(b). When he approached, PO Mulhearn did not have his gun drawn, nor did he see any other officer have his gun drawn. All of the officers were yelling for § 87(2)(b) to put his hands behind his back.

§ 87(2)(b) put his hands up in a fighting stance and said, “Why are you trying to arrest me?” All of the officers told § 87(2)(b) to come over to the car and put his hands behind his back, which he refused to do. PO Mulhearn grabbed § 87(2)(b) by the arms. PO Mulhearn could not remember exactly which officers made physical contact with § 87(2)(b). The officers walked him towards the car and leaned him over the rear of the car and § 87(2)(b) began kicking backwards towards PO Napolitano. § 87(2)(b) was flailing his arms and trying to spin out of their grasp. After two or three kicks, PO Napolitano warned § 87(2)(b) that he was going to mace him if he did not stop resisting. § 87(2)(b) continued to resist. PO Napolitano then used pepper spray against § 87(2)(b). PO Mulhearn was also hit with the pepper spray.

§ 87(2)(b) continued to resist. He leaned forward, he kicked back and he fell to the ground. § 87(2)(b) fell face first onto the ground, which is how he sustained the injuries on his face. The officers went down to the ground with § 87(2)(b). § 87(2)(b) continued to wriggle around and spin, trying to roll over to prevent being handcuffed. The officers were still trying to hold him down. After a few seconds on the ground the first handcuff was placed on § 87(2)(b). He began spitting and yelled to the crowd that had gathered around, “Go get my gun! Get my gun, somebody shoot these guys!” During the effort to handcuff § 87(2)(b) PO Mulhearn did not, nor did any other officers punch or kick § 87(2)(b). PO Mulhearn never hit § 87(2)(b) with his gun, nor did any of the other officers hit § 87(2)(b) with a gun. PO Mulhearn did not tell § 87(2)(b) that he would kill or murder him. PO Mulhearn did not hear an officer threaten to kill § 87(2)(b). After being handcuffed, § 87(2)(b) continued to spit.

PO Mulhearn did not stop or question any other individuals at scene. PO Mulhearn did not see officers stop or question any another individuals at the scene. PO Mulhearn did not frisk or search any other individual at the scene and he did not see officers frisk or search another individual there.

PO Mulhearn briefly saw EMS treating § 87(2)(b) in the cell and heard him refuse to get an eye wash. While he was being treated by EMS a mask was put over § 87(2)(b)'s face to prevent him from spitting on people. PO Rouse was called in to assist as EMS treated § 87(2)(b). PO Mulhearn did not see officers pull § 87(2)(b)'s hair or punch him while at the stationhouse. § 87(2)(b) was taken to § 87(2)(b) by EMS.

PO Thomas Rouse, Memo Book Entry

PO Rouse has the following memo book entries regarding this incident (encl. 13a-13c).

“2330: assist sector J in § 87(2) arrest-perp did resist arrest-kicked out at officers and resisted being cuffed. 2400: (approx) perp from above incident did spit at me, spraying blood and mucus on clothing. Exposure #321.”

PO Thomas Rouse, CCRB Statement

On December 15, 2008, the CCRB interviewed PO Thomas Rouse of the 75th Precinct (encl.13d-13e). *PO Rouse is a § 87(2)(b)-old white male with brown hair and brown eyes. He is 6'2" tall and weighs 205 pounds.*

On February 16, 2008, PO Rouse was scheduled to work Anti Crime with PO Mulhearn and PO Nicoletta from 5:30 PM to 2:05 AM. He was dressed in plainclothes and assigned to unmarked patrol car 8205.

On February 16, 2008, prior to 11:30 PM, PO Menze and PO Napolitano from sector J notified the Anti Crime team over the radio that they observed a stolen vehicle parked at 779 Logan Street in Brooklyn. Under the supervision of the Sergeant Downes, they set up surveillance. PO Rouse, PO Nicoletta and PO Mulhearn were positioned in their car approximately a block away from the stolen vehicle. PO Rouse remembered that the stolen vehicle was red, but he did not recall the make or model of the vehicle. PO Rouse and his partners received a radio call that an individual entered the vehicle. PO Rouse, PO Mulhearn, PO Nicoletta, PO Menze and PO Napolitano all converged on the vehicle.

When PO Rouse approached in his vehicle, § 87(2)(b) was alone outside of the vehicle. Officers did not stop, search, or frisk any other individuals during this incident. Officers made commands to § 87(2)(b) to put his hands behind his back, which he refused to do. PO Rouse and other officers had physical contact with § 87(2)(b) to handcuff him. § 87(2)(b) resisted by flailing his arms. Officers struggled in an attempt to handcuff § 87(2)(b). PO Rouse was not sure which officers had physical contact with § 87(2)(b). PO Rouse did not kick or punch § 87(2)(b). He did not see an officer kick or punch § 87(2)(b). PO Rouse did not hit § 87(2)(b) with his gun, nor did he see an officer hit § 87(2)(b) with a gun. At an unknown point during the struggle, PO Napolitano pepper sprayed § 87(2)(b) and § 87(2)(b) and officers fell to the ground during the struggle. PO Rouse was attempting to grab his arms to handcuff him. § 87(2)(b) continued to resist and he was spitting at police officers. § 87(2)(b) was eventually handcuffed when he was on the ground. § 87(2)(b) told PO Rouse that he would find him and shoot him. § 87(2)(b) was also screaming to the crowd that was forming, "Get my gun." § 87(2)(b) was placed in the back of a marked patrol car. He had visible injuries on his face. PO Rouse never threatened to kill or murder § 87(2)(b). He did not hear officers threaten to kill him or murder § 87(2)(b).

§ 87(2)(b) was taken directly to the 75th Precinct stationhouse. Sergeant Downes instructed PO Rouse to take a photograph of § 87(2)(b)'s injuries while he was receiving treatment from EMS. When PO Rouse attempted to take a photograph of § 87(2)(b), § 87(2)(b) spit on PO Rouse's neck and shoulder. PO Rouse did not recall which officer was present with him when this happened. PO Rouse did not punch § 87(2)(b) or pull his hair. PO Rouse did not see officers punch § 87(2)(b) or pull his hair.

PO Vito Nicoletta, Memo Book Entry

PO Nicoletta does not have any memo book entries regarding this incident (encl. 14a).

PO Vito Nicoletta, CCRB Statement

On December 16th, 2008, the CCRB interviewed PO Vito Nicoletta of the 75th Precinct (encl. 14b-14c). *PO Nicoletta is a § 87(2)(b)-old white male, who is bald and has brown eyes. He is 5'6" tall and weighs 160 pounds.*

On February 16, 2008, PO Nicoletta was assigned to the Anti-Crime unit for the 75th Precinct and was scheduled to work from 5:30 PM to 2:00 AM with PO Rouse and PO Mulhearn. He was dressed in plainclothes and assigned to RMP 973.

On February 16th, 2008, it had come to the attention of the Anti-Crime team that there was a stolen Red Honda Civic, on Logan Street in Brooklyn. PO Menze and PO Napolitano discussed setting up surveillance with Sergeant Downes. PO Nicoletta, PO Mulhern and PO Rouse were in a vehicle together a couple blocks away from the stolen car waiting for someone to approach the vehicle. PO Napolitano, PO Menze, PO Viar, and Sgt. Down, were all on positioned at different locations.

PO Viar gave a signal to the team that an individual had moved in towards the car. PO Nicoletta did not recall if the other officers were at the scene when he, PO Mulhearn and PO Rouse first approached the vehicle. PO Nicoletta did not have his gun drawn when he first approached the vehicle, nor did any other officers. When PO Nicoletta approached the car, § 87(2)(b) was standing alone outside the vehicle towards the front of the car. When the officers approached, they said, "Police! Let me see your hands! Police! Don't move. Put your hands in the air." § 87(2)(b) was non-compliant with officers' request to keep his hands where they could be seen. § 87(2)(b) turned to try to flee the scene and all of the officers approached him. PO Nicoletta grabbed one of § 87(2)(b)'s arms. PO Nicoletta could not recall whether all of the officers made physical contact with § 87(2)(b) when trying to handcuff him. § 87(2)(b) would not put his hands behind his back and he tried to spin away, flail his arms, and kick backwards to break free.

PO Nicoletta could not recall exactly how § 87(2)(b) got to the ground, but believed that § 87(2)(b) fell. The officers fell with § 87(2)(b) to the ground. § 87(2)(b) continued to resist while on the ground including kicking his feet, turning, spitting, and threatening the officers by calling out for someone to get his gun. By this point a crowd had started to build around the scene. PO Nicoletta did not kick or

punch § 87(2)(b) nor did any of the other officers kick or punch § 87(2)(b). PO Nicoletta did not tell § 87(2)(b) that he was going to kill him or murder him. He did not hear an officer threaten to kill or murder § 87(2)(b). At no point did PO Nicoletta hit § 87(2)(b) with his gun, nor did any officer hit § 87(2)(b) with a gun. PO Nicoletta did not know at the time of the incident that PO Napolitano had used pepper spray. PO Nicoletta was unsure whether the pepper spray was used while § 87(2)(b) was still standing or after he had fallen to the ground. § 87(2)(b) was handcuffed while on the ground, at which point he was lying on the side of his body. After § 87(2)(b) got up from ground, § 87(2)(b)'s mouth was bleeding.

§ 87(2)(b) was then placed in PO Napolitano's caged RMP, at which point he was still spitting. No other individuals besides § 87(2)(b) were stopped during the incident. PO Nicoletta did not frisk or search any other individuals and did not see any other officers stop or frisk any other individuals at the scene.

§ 87(2)(b) was taken back to the 75th Precinct stationhouse. PO Napolitano, PO Nicoletta and PO Rouse brought § 87(2)(b) into the cell and put him in a chair. EMS arrived to treat § 87(2)(b). § 87(2)(b) did not want to provide his name and told EMS that he had AIDS. § 87(2)(b) spit on PO Rouse, at which point PO Nicoletta was standing behind § 87(2)(b). PO Nicoletta kept his hands on § 87(2)(b) so that he could not stand up and would not be able to spit on other people. PO Nicoletta did not punch § 87(2)(b) or pull his hair. He did not see any other officer punch § 87(2)(b) or pull his hair while in the stationhouse.

Sergeant Sean Downes, Memo Book Entry

Sgt. Downes has the following memo book entries regarding this incident (enc.. 16a-16b).

"2237: 1 under PO Napolitano (4x12) f/o 779 Logan Street re § 87(2)(b) 2343: 84c 75th PCT 62A."

Sergeant Sean Downes, CCRB Statement

On February 27, 2009, the CCRB interviewed Sergeant Sean Downes (encl. 16c-16d). *Sgt. Downes is a § 87(2)(b)-old white male with brown hair and green eyes. He is 5'11" tall and weighs 220 pounds.*

On February 16, 2008, Sgt. Downes was scheduled to work Anti Crime with PO Viar from 5:26 PM to 2:10 AM. He was dressed in plainclothes and assigned to unmarked patrol car 547.

On February 16, 2008, at approximately 10:30 PM, Sgt. Downes received a call from PO Menze and PO Napolitano from sector J patrol. They asked for assistance with a stolen vehicle which was parked at 779 Logan Street in Brooklyn. Sgt. Downes set up surveillance on the vehicle. Sgt. Downes was parked on Logan Street and PO Viar was on the observation post outside of the patrol car where Sgt. Downes was positioned. Sgt. Downes was not in a position to see the vehicle. He was aware that the stolen vehicle was a red Honda Civic. PO Mulhearn, PO Rouse, and PO Nicoletta participated in this surveillance. After approximately 30 to 45 minutes of observing the stolen vehicle, PO Viar saw § 87(2)(b) enter the vehicle. Sgt. Downes and PO Viar radioed to the rest of the officers. All of the officers converged on the vehicle at the same time. As soon as the officers approached the vehicle, § 87(2)(b) exited the vehicle. § 87(2)(b) was alone. No other individuals were stopped, frisked, or searched during this incident. Sgt. Downes stood approximately ten to fifteen feet away from § 87(2)(b). He did not have any physical contact with § 87(2)(b). He did not recall how many or which officers had physical contact with § 87(2)(b). Sgt. Downes observed officers approach § 87(2)(b) and try to place him in handcuffs. Officers did not approach § 87(2)(b) with their guns drawn or their guns pointed. Sgt. Downes did not point his gun at § 87(2)(b). § 87(2)(b) resisted arrest. He swung his arms, kicked, and spit at officers. He was also using profanity and derogatory comments towards the police officers. Officers did not use their guns as clubs with § 87(2)(b). Officers did not kick or punch § 87(2)(b). At some point PO Napolitano pepper sprayed § 87(2)(b). Sgt. Downes did not recall at which point during the struggle this occurred. Officers did not threaten to kill or murder § 87(2)(b). The struggle got down to the ground. Sgt. Downes does not recall how it got down to the ground or how many officers had physical contact with § 87(2)(b) when he was on the ground. § 87(2)(b) continued to resist on the ground by kicking and spitting. It took

approximately one to two minutes on the ground before officers handcuffed § 87(2)(b). After officers handcuffed § 87(2)(b) he was placed in the back seat of a patrol car. Sgt. Downes opened the rear door to determine if § 87(2)(b) had any injuries and if he needed medical treatment. When he opened the door, § 87(2)(b) spit at him. § 87(2)(b) had a laceration on his forehead. Sgt. Downes did not know how he received that injury.

§ 87(2)(b) was taken to the 75th Precinct. Sgt. Downes was not present when § 87(2)(b) received treatment from EMS. He was aware that § 87(2)(b) spit on PO Rouse. Sgt. Downes instructed PO Rouse to get an exposure number. Sgt. Downes did not see officers punch § 87(2)(b) or pull his hair.

PO Paul Viar, Memo Book Entry

PO Viar has the following memo book entries regarding this arrest (encl. 17a-17c).

“2330: backing 75J on § 87(2) arrest on Logan and Hegerman. Perp did resist arrest.”

PO Paul Viar, CCRB Statement

On February 23, 2009, the CCRB interviewed PO Paul Viar (encl. 17d-17e). *PO Viar is a § 87(2)(b) year-old white male with brown hair and brown eyes. He is 5'8" tall and weighs 180 pounds.*

On February 16, 2008, PO Viar was scheduled to work an Anti Crime assignment from 5:30 PM to 2:05 AM with Sergeant Downes. He was dressed in plainclothes and assigned to an unmarked patrol car.

On February 16, 2008, at approximately 11:35 PM, PO Viar responded to a call from sector J to assist with a stolen vehicle. PO Viar did not participate in a surveillance of the vehicle or an observation post. PO Viar arrived at the scene after § 87(2)(b) was already placed in handcuffs. PO Viar was approximately two to three car lengths away from the scene. § 87(2)(b) was screaming, but PO Viar did not recall what he said. PO Napolitano, PO Menze, PO Rouse, PO Mulhearn, and PO Nicoletta were present at the scene. PO Viar was at the scene for approximately five minutes. § 87(2)(b) was taken directly to the 75th Precinct stationhouse. PO Viar did not see officers point their guns at § 87(2)(b). He did not see officers punch or kick § 87(2)(b). He did not see officers use their gun as a club against § 87(2)(b). PO Viar did not recall if § 87(2)(b) was sprayed with pepper spray. PO Viar did not stop, frisk, or search any individuals at the scene. He did not see officers stop, frisk, or search any other individuals at the scene. PO Viar saw § 87(2)(b) at the Precinct, he had a laceration on his face. PO Viar was not present when § 87(2)(b) received medical treatment.

Ambulance Call Report

On February 19, 2008, an ambulance call report was prepared regarding § 87(2)(b) (encl. 18a-18b). The report indicates the following. A § 87(2)(b)-old male was found inside the 75th Precinct. The patient states that he was in a fight with police officers. The patient has a laceration over the right eye. The patient states that he was maced. EMS irrigated the patient's eye and treated the wound on his face with a dressing. A cold pack was also applied to the wounded area.

Medical Records

There are no medical records on file at § 87(2)(b) regarding § 87(2)(b)'s treatment on February 16, 2008 or February 17, 2008.

On § 87(2)(b), § 87(2)(b) was admitted to the § 87(2)(b) Emergency Room at approximately 6:19 AM while in police custody (encl. 18c-18l). The emergency department nursing flow chart indicates that § 87(2)(b) was classified as an EDP. The assessment notes that § 87(2)(b) was acting irrational towards police officers. § 87(2)(b) told medical personnel that he was hit with a gun on the head two days prior during his arrest. § 87(2)(b) had an abrasion to his forehead and a

laceration to his upper lip. The medical evaluation notes that § 87(2)(b) was acting irrationally, refusing to be fingerprinted and processed at Central Booking. § 87(2)(b) was speaking incoherently and was generally uncooperative. § 87(2)(b) was diagnosed with anxiety and multiple contusions. A CT scan of § 87(2)(b)'s facial bones revealed no fractures. § 87(2)(b) has noted medical history of seizures. He was released from § 87(2)(b) on § 87(2)(b), with a referral for psychiatric evaluation.

On § 87(2)(b), § 87(2)(b) was referred to § 87(2)(b) Emergency Department as a prisoner (encl. 18m-18w). His chief complaint was, "I was beaten up by the cops." He told medical personnel that he was hit with the butt of a gun. The progress notes for his treatment indicate that he was acting irrational and agitated. During his interview with case management, he was uncooperative. § 87(2)(b) was diagnosed with anxiety with a noted medical history of generalized convulsive epilepsy. He was released back into police custody of § 87(2)(b).

Police Documents

Sprint

The sprint indicates that sector J of the 75th Precinct reported that an individual was arrested at 11:37 PM on February 16, 2008 (encl. 19a).

Roll Call

The roll call indicates that Sergeant Downes, PO Napolitano, PO Menze, PO Mulhearn, PO Rouse, PO Nicoletta, and PO Viar were scheduled to work during the date and time of the incident (encl. 19f-19p).

Disposition of Arrest

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Criminal Conviction of Civilians

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Substantiated CCRB Allegations

In his three year tenure with the NYPD, PO Napolitano has no substantiated allegations in his CCRB history (encl. 3a). In his six year tenure with the NYPD, PO Rouse has no substantiated allegations in his CCRB history (encl. 3b-3c).

Notice of Claim

There is no notice of claim on file for [§ 87(2)(b)] regarding this incident (encl. 24a).

Conclusions and Recommendations

Officer Identification

[§ 87(2)(b)] said that officers stopped him and [§ 87(2)(b)] and pointed their guns at them. PO Napolitano, PO Menze, PO Nicoletta, PO Rouse, and PO Mulhearn of the 75th Precinct admitted to stopping [§ 87(2)(b)] but denied stopping [§ 87(2)(b)]. Allegation A and Allegation B were therefore pleaded against “Officers” from the 75th Precinct. Although PO Napolitano, PO Menze, PO Nicoletta, PO Rouse, and PO Mulhearn denied pointing their guns at [§ 87(2)(b)] [§ 87(2)(b)] alleged that they did.

[§ 87(2)(g)] [REDACTED] [REDACTED] [§ 87(2)(b)] said that an officer, identified by the investigation as PO Rouse, threatened to kill him. PO Rouse denied that he threatened [§ 87(2)(b)] with physical force. [§ 87(2)(g)] [REDACTED]

[REDACTED] Although PO Napolitano denied hitting [§ 87(2)(b)] with a gun, [§ 87(2)(b)] alleged that he did so. [§ 87(2)(g)] [REDACTED]

[REDACTED] [§ 87(2)(b)] alleged that officers kicked and punched him at the incident location and pulled his hair and punched him at the stationhouse. [§ 87(2)(g)] [REDACTED]

Undisputed Facts

It is undisputed that officers stopped [§ 87(2)(b)]. It is undisputed that PO Napolitano used pepper spray against [§ 87(2)(b)].

Disputed Facts

[§ 87(2)(g)] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Assessment of Evidence

§ 87(2)(g) § 87(2)(b) told the CCRB that he was walking with § 87(2)(b) when an officer got out of an unmarked vehicle and pointed his gun at them. The officer said, "Stop right there." § 87(2)(b) said that they were stopped by five police officers, who had their guns pointed. § 87(2)(g) § 87(2)(b) said that an officer frisked and searched § 87(2)(b) which no one else could corroborate. When § 87(2)(b) returned later to the scene after he was frisked and searched, § 87(2)(b) did not appear to be injured. Officer statements, § 87(2)(b)'s medical records, and his arrest photograph all demonstrate that § 87(2)(b) has visible injuries on his face. Additionally, the pedigree information that § 87(2)(b) provided for the officers that were present at the scene, did not match the pedigree information of the officers that the investigation determined were at the scene. § 87(2)(g)

PO Napolitano, PO Menze, PO Rouse, PO Mulhearn, PO Nicoletta, and Sgt. Downes, all told the CCRB that § 87(2)(b) was alone when officers approached him. Additionally, they said that no other individuals, besides § 87(2)(b) were stopped during this incident. § 87(2)(g)

§ 87(2)(g) § 87(2)(b) said that he was walking down the street with § 87(2)(b) when he was stopped by officers. § 87(2)(b) did not admit to entering or exiting a vehicle, or standing near a vehicle. § 87(2)(b) told the CCRB that he was walking with § 87(2)(b) at the time of the incident. § 87(2)(g)

According to officers, surveillance was set up for a stolen red Honda Civic that was parked on Logan Street. Although PO Viar did not admit to being the observation post during the surveillance, officers present at the scene identified his role as such. After PO Menze, PO Napolitano, PO Mulhearn, PO Rouse, and PO Nicoletta received notification from PO Viar and Sgt. Downes that an individual entered the car, they converged at the location, parking in front of and behind the stolen vehicle. PO Napolitano and PO Menze arrived at the scene first, followed by PO Rouse, PO Mulhearn, and PO Nicoletta. PO Napolitano said that as soon as he approached the stolen vehicle, § 87(2)(b) exited the vehicle and ran towards the rear of the vehicle. PO Menze, PO Mulhearn, and Sgt. Downes corroborated PO Napolitano's statement. PO Rouse and PO Nicoletta said that § 87(2)(b) was standing outside of the vehicle when they approached.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) said that PO Napolitano, PO Menze, PO Nicoletta, PO Mulhearn, and PO Rouse had their guns pointed at him. These officers denied pointing their guns or even having their guns drawn during the incident. § 87(2)(g)

§ 87(2)(g) PO Rouse denied threatening to kill § 87(2)(b). His statement was corroborated by PO Menze, PO Napolitano, PO Rouse, and PO Nicoletta. According to PO Rouse, during the incident, § 87(2)(b) told PO Rouse that he would find him and shoot him. PO Rouse also said that § 87(2)(b) yelled to the crowd, "Go get my gun." § 87(2)(g)

§ 87(2)(g) PO Menze, PO Napolitano, PO Mulhearn, and PO Nicoletta all noted that § 87(2)(b) later yelled towards the crowd, "Go get my gun." § 87(2)(g)

§ 87(2)(g) According to § 87(2)(b) he did not resist in any way, although he admitted to resisting arrest in the past. § 87(2)(b) said that he put his hands in the air, as instructed to do by officers that approached him. According to PO Menze, PO Napolitano, PO Mulhearn, PO Nicoletta, PO Rouse, and Sgt. Downes, § 87(2)(b) refused to put his hands behind his back. He flailed his arms, kicked, and spit at officers in an effort to resist being put in handcuffs. PO Napolitano, PO Rouse, and PO Viar all have memo book entries which document that § 87(2)(b) resisted arrest.

§ 87(2)(g) Medical notes from § 87(2)(b) indicate that § 87(2)(b) was acting irrational towards police officers. His medical evaluation indicates that he refused to be fingerprinted and processed at Central Booking. It is additionally noted that § 87(2)(b) was "generally uncooperative." § 87(2)(b)'s medical records from the § 87(2)(b) Emergency Department note he was agitated, acting irrational, and was uncooperative. § 87(2)(g)

§ 87(2)(g) According to § 87(2)(b) PO Napolitano hit him with a gun in the face approximately five times before he was handcuffed. § 87(2)(b) said that he received the lacerations on his face when he was hit with the gun. Officers threw him to the ground and pepper sprayed him after he was handcuffed. Officers also kicked and punched him while he was handcuffed on the ground. § 87(2)(b) told the CCRB that he has seizures now as result of the force that was used against him.

§ 87(2)(g) PO Napolitano, PO Menze, PO Rouse, PO Mulhearn, and PO Nicoletta all assisted in attempting to handcuff § 87(2)(b) because he was resisting. During the struggle, PO Napolitano used pepper spray against § 87(2)(b) before he was handcuffed. This statement was corroborated by PO Menze, PO Mulhearn, and PO Rouse. At approximately the same time, § 87(2)(b) and police officers fell to the ground. PO Napolitano, PO Menze, and PO Mulhearn said that § 87(2)(b) fell, face forward on the ground. PO Napolitano, PO Menze, PO Mulhearn, PO Rouse, PO Nicoletta, and Sgt. Downes all said that § 87(2)(b) continued to struggle when he was on the ground. § 87(2)(b) kicked, moved his body, refused to give his hands to officers, and continued to spit at police officers. Officers grabbed § 87(2)(b)'s arms in an attempt to handcuff him and he was eventually handcuffed while he was on the ground. These officers also noted that § 87(2)(b) continued to spit at officers after he was handcuffed and while he was in the patrol car. The officers denied kicking or punching § 87(2)(b)

§ 87(2)(b)'s medical records from § 87(2)(b) and § 87(2)(b) show that he said that an officer hit him with a gun. The ambulance call report indicates that § 87(2)(b) told EMS that he was in a fight with police officers. The ambulance call report shows that his eye's were irrigated because he was pepper sprayed. The ambulance call report also noted that he was treated for a laceration of the right eye. § 87(2)(b) was treated for his lacerations at § 87(2)(b) These records were not on file § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

According to § 87(2)(b) PO Rouse and PO Nicoletta held him down in a chair because he refused to sit while being treated by EMS. § 87(2)(b) said that these officers punched him and pulled his hair. EMT § 87(2)(b) told the CCRB that § 87(2)(b) was physically resistant while receiving treatment. He was yelling, cursing, and spitting at police officers. Officers restrained him. EMT § 87(2)(b) did not see officers punch § 87(2)(b) or pull his hair. EMT § 87(2)(b) said that officers held § 87(2)(b) s down and that he was spitting at officers. Officers did not punch § 87(2)(b) EMT § 87(2)(b) did not recall if officers pulled his hair. According to PO Rouse and PO Nicoletta, § 87(2)(b) spit on PO Rouse. § 87(2)(b) was restrained, but officers did not punch him or pull his hair. § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

Allegation A: Officers stopped § 87(2)(b)

§ 87(2)(g)

Officers stopped § 87(2)(b) by blocking the path of the vehicle that he was in with police cars. When § 87(2)(b) exited the vehicle, officers ordered § 87(2)(b) to put his hands behind his back.

According to *Barry Kamins' Search and Seizure*, a police officer can stop a person in a public place when they reasonably suspect that such person is committing, has committed, or is about to commit either a felony or a misdemeanor (encl. 1a-1b). In *United States v. Cortez*, the United States Supreme Court has held that a police officer must have a particularized and objective basis for suspecting that particular person of criminal activity (encl. 1c). This suspicion must be supported by specific and articulable facts that reasonably prompted the stop. § 87(2)(g)

§ 87(2)(g)

Allegation B: Officers stopped § 87(2)(b)

§ 87(2)(g)

Allegation C: Officers pointed their guns at § 87(2)(b)

§ 87(2)(g)

As in OATH case *Police Department v. Gliner* (September 2000), the determination as to whether pointing a gun rises to the level of misconduct

must be made by assessing the reasonableness of the officer's actions in the totality of the surrounding circumstances (encl. 1d). § 87(2)(g)

Allegation D: PO Rouse threatened § 87(2)(b) with physical force.

§ 87(2)(g)

Allegation E: PO Napolitano used his gun as a club against § 87(2)(b)

§ 87(2)(g)

Allegation F: PO Napolitano used pepper spray against § 87(2)(b)

PO Napolitano pepper sprayed § 87(2)(b) while officers were attempting to handcuff him. § 87(2)(b) refused to comply with orders given by police officers and resisted arrest. Additionally, § 87(2)(b) kicked and spit at police officers. Patrol Guide Procedure 212-95 indicates that pepper spray may be used when a member of service reasonably believes it is necessary to effect an arrest of a resisting suspect, for self-defense or defense of another from unlawful force (encl. 2a-2d). Pepper spray may be used in arrest situations where physical presence and or verbal commands have not been effective in overcoming physical resistance. § 87(2)(g)

§ 87(2)(g)

Allegation G: Officers used physical force against § 87(2)(b)

§ 87(2)(g)

Patrol Guide Procedure 203-11 requires all members of the service at the scene of a police incident to use minimum necessary force to effect an arrest (encl. 2e-2f). As in the Police Student's Guide on the Scale of Escalating Force, an officer can use compliance techniques such as wrestling holds and grips designed to physically overpower subjects in response to minor physical resistance (encl. 2g). § 87(2)(g)

§ 87(2)(g)

Allegation H: At the 75th Precinct stationhouse, officers used physical force against § 87(2)(b)

§ 87(2)(g) [Redacted]
[Redacted] [Redacted]
[Redacted]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: